IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 22960 of 2007(G)

OS.906/2004 of II ADDL.M.C., ERNAKULAM
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PETITIONER:

UNNIKRISHNAN,
MELETH HOUSE, "SAROJ", KUNDANNUR.

BY ADV. SRI.G.SHRIKUMAR
SRI.SREEJITH S.NAIR

RESPONDENT:

BHARATHIAMMA,
D/O PARAMESWARA MENON, NANDANAM,
CHOTTANIKKARA, KANAYANNUR TALUK.

BY ADV. SRI.B.RAMACHANDRAN
SMT.JOLIMA GEORGE
SMT.P.N.INDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.22960/2007 G

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT FILED BY THE RESPONDENT/PLAINTIFF BEFORE THE MUNSIFF'S COURT, ERNAKULAM.**

EXT.P2: **COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER/ DEFENDANT BEFORE THE MUNSIFF'S COURT, ERNAKULAM.**

EXT.P3: **COPY OF THE ORDER DTD. 13/06/2007 PASSED BY THE IIND ADDITIONAL MUNSIFF'S COURT, ERNAKULAM.**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

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W.P.(C) No.22960 OF 2007

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Dated this the 4th day of September 2007

JUDGMENT

This writ petition is preferred against the order on Issue No.4 in O.S.No.906 of 2004 of the II Addl.Munsiff's Court, Ernakulam regarding valuation of the property for the purpose of court fee and jurisdiction. Ext.P1 is the plaint. The first prayer is for a declaration to the effect that the plaintiff is entitled to get 34 cents of property after deducting two kudikidappu rights and then a decree of permanent prohibitory injunction to restrain the defendant from trespassing into the plaint schedule property. Though the declaratory relief is claimed with respect to 34 cents when it comes to the schedule, the extent is shown as 10 cents and in the description it is shown as partial reclaimed pond and there is no yield in it. The plaintiff has valued the suit for the purpose of court fee under Section 25(b) of the Kerala Court Fees and Suit Valuation Act at Rs.20,000/- and for the permanent injunction at nil. It is true that if the prayer is one for a declaration and consequential injunction, the court fee has to be paid under Section 25(b) of the said Act and the valuation of the property has to be

done in accordance with Section 7 of the Court Fees Act. The dispute is regarding the valuation of the property. I find that the court below has not properly applied its mind and had lost sight of the relevant provisions in the Court Fees Act including Section 19 which empowers the court for the issuance of a Commission for the purpose of valuing the property. If it comes within Section 7(2) of the Act or so then the annual profits minus the assessment can be the basis to calculate the market value. In other case Section 7 specifically deals with how it has to be proceeded with.

Therefore, the order under challenge is set aside and the matter is remitted back to the court below for consideration of the court fee and at the same time I also permit the plaintiff in case of necessity to amend the plaint under Section 25(b) of the Kerala Court Fees and Suit Valuation Act and thereafter the court is directed to conduct an enquiry after hearing both sides regarding valuation of the property as per its decision based on the principles of law.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-